THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.25095 OF 2005

Between:

Sri T.G. Tiruvengalachary ….. Petitioner

And

1. The Government of A.P.

rep. by its Secretary, Agriculture & Cooperation

Department, A.P. Secretariat, Hyderabad……. Respondents

and three others

Counsel for the petitioner : Sri Y.Venkat Sastri

Counsel for the respondents : G.P. for Services II

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ORDER: (per RRJ)

Heard Sri Y.Venkat Sastri, learned counsel for the petitioner and the learned government pleader for services and both the counsel agreed that the writ petition itself could be disposed of at the stage of admission.

The present writ petition is filed aggrieved by order of the A.P. Administrative Tribunal in O.A.No.4580 of 2000 dated 7.8.2003 whereby the Tribunal directed the respondents to treat the period of absence of the petitioner, from 14.12.1992 to 11.12.1995, as leave to which he was eligible with all consequential benefits.

Facts, to the extent necessary to this writ petition, are that the petitioner is a retired Assistant Director of Agriculture and had earlier worked in Farmers Training Centre, Nizamabad. The petitioner applied for leave from 1.10.1991 to 14.11.1991 in the first instance and thereafter extended the leave upto 31.12.1992. On the ground that he had unauthorizedly absented himself from duty, G.O.Rt.No.2690, Food and Agriculture (Agrl.I) Department dated 24.12.1992 was issued placing him under suspension. The petitioner continued under suspension from 24.12.1992 to 11.12.1995. The 1st respondent issued orders in G.O.Rt.No.567, Agriculture and

Cooperation (Agrl.I) Department dated 28.6.199,6 proposing to hold an enquiry. A charge sheet was issued for unauthorized absence to which the petitioner submitted his explanation. The 1st respondent, vide G.O.Rt.No.240, Agriculture and Cooperation (Agrl.II) Department dated 11.3.1998, imposed the punishment of "censure" on the petitioner and treated the period of his absence as not on duty. The petitioner preferred an appeal against the said order of punishment and the government, vide G.O.Rt.No.5, Agriculture and Cooperation (Agrl.II) Department dated 2.1.1999, while waiving the punishment of "censure", directed that the period of his absence be treated as "not on duty". The petitioner filed O.A.No.4580 of 2000 before the A.P. Administrative Tribunal seeking the following relief:

"(i) to direct the respondents to sanction the leave of the applicant for the period from 1.10.1991 to 23.12.1992 (ii) to call for the records relating to G.O.Rt.No.5, Agriculture and Cooperation (Agril.II) dated 2.1.1999 and set aside the same to the extent of treating the period of absence, as 'not on duty' by holding the same as illegal, arbitrary, discriminatory, violative of Rules and also subversive of Art.14 and 16 of the constitution of India and consequently direct the respondents to regularize the period of suspension of the applicant from 24.12.1992 to 11.12.1995 under F.R.54-B for all purposes and with all consequential benefits"

The Tribunal, held that pursuant to G.O.Rt.No.5 dated 2.1.1999, not even a punishment of "censure" was pending against the petitioner as the same had already been waived and in such circumstances, when there was not even a minor penalty pending against the petitioner, he was entitled to have the period of unauthorized absence treated as 'duty' in terms of F.R.54 B. While so holding, the Tribunal directed the respondents to issue necessary orders treating the period of absence of the petitioner from 24.12.1992 to 11.12.1995 as leave to which he was eligible with all consequential benefits.

Before us, Sri Y.Venkat Sastri, learned counsel for the petitioner, submits that having held that the petitioner was entitled to have the period of his absence treated as "duty" in terms of F.R. 54-B, the Tribunal erred in directing the respondents to treat the period of absence from 24.12.1992 to 11.12.1995 as leave to which the petitioner was entitled to with all consequential benefits.

As is clear from the facts stated above, the petitioner was under suspension from 24.12.1992 to 11.12.1995 and it is this period of nearly three years which he seeks

to be treated as on duty since the punishment of “censure” imposed on him was waived by the respondents.

F.R. 54-B reads thus:

“(1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement while under suspension, the authority competent to order reinstatement shall consider and make a specific order –

a. regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be, and

b. whether or not the said period shall be treated as a period spent on duty

(2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled and he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended;

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may after giving him an opportunity to make his representation within sixty days from the date on which communication to this regard is served on him and after considering the representation, if any submitted by him, direct for reasons to be recorded in writing, that the Government servant shall be paid for the period for such delay only such amount not being the whole of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In case other than those falling under sub-rules (2) an (3), the Government servant shall subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served as may be specified in the notice.

(6) Where suspension is revoked pending finalization of the disciplinary or Court proceedings, any order passed under sub-rule(1) before the conclusion of the proceedings

against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1), who shall make an order according to the provisions of sub-rule(3) or sub-rule(5) as the case may be.

(7) In a case falling under sub-rule(5) the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically dir3ects that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

(8) The payment of allowances under sub-rule(2), sub-rule(3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount of the full pay and allowances determined under the proviso to sub-rule(3) or under sub-rule (5) shall not be less than the substantive allowance and other allowances admissible under Rule 53."

Under FR-54B(3) when the authority competent to order reinstatement is of the opinion that the suspension is wholly unjustified, the government servant, subject to sub-rule (8), is entitled to be paid full pay and allowances to which he would have been entitled, had he not been suspended. FR 54-B(4) provides that in a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes. Sub-rule (8) of F.R. 54-B subjects payments of allowances under sub-rule (3) to all other conditions under which such allowances are admissible.

As the Tribunal has held that not even a minor penalty was pending against the petitioner and he was entitled to have the period of unauthorized absence treated as on "duty" in terms of FR 54-B, it must naturally follows therefrom that the Tribunal was of the view that the suspension of the petitioner was wholly unjustified. The corollary thereto is that under sub-rule (4) of FR-54B, the entire period of suspension of the petitioner from 24.11.1992 to 11.12.1995 is required, for all purposes, to be treated as on duty. In such circumstances the Tribunal was not justified in directing the respondents to treat the period of suspension as leave to which the petitioner was eligible.

The order of the Tribunal to the extent of directing the respondents to treat the period of suspension as leave to which the petitioner was eligible, is set aside. As a

result, the petitioner shall be entitled for all pay and allowances during the period of his suspension from 24.12.1992 to 11.12.1995, after deducting amounts if any, paid to him during his suspension period. The amounts due to the petitioner shall be paid within a period of three months from the date of receipt of this order.

The writ petition is accordingly allowed. In the circumstances, there shall be no order as to costs.

_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ J.
Chelameswar, J

Dt. .12.2005

_____ Ramesh
Ranganathan, J